No. 18-266

# In The Supreme Court of the United States

THE DUTRA GROUP,

*Petitioner,*

vs.

CHRISTOPHER BATTERTON,

*Respondent.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit**

## *AMICUS CURIAE* BRIEF OF THE MARITIME LAW ASSOCIATION OF THE UNITED STATES IN SUPPORT OF PETITIONER


FRANCIS X. NOLAN, III
VEDDER PRICE P.C.
1633 Broadway
31st Floor
New York, NY 10019
212.407.7700
fnolan@vedderprice.com

*President*
MARITIME LAW ASSOCIATION OF THE UNITED STATES

MOLLY J. HENRY
*Counsel of Record*
DAVID R. BOYAJIAN
SCHWABE, WILLIAMSON & WYATT, P.C.
1420 5th Ave., Suite 3400
Seattle, WA 98101
206.622.1711
mhenry@schwabe.com
dboyajian@schwabe.com

*Counsel for Amicus Curiae*



COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

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## I. INTEREST OF *AMICUS CURIAE*[1]

The Maritime Law Association of the United States (MLA) is a nationwide bar association founded in 1899 and incorporated in 1993. It has a membership of approximately 2,600 attorneys, federal judges, law professors, and others interested in maritime law. It is affiliated with the American Bar Association and is represented in the Association's House of Delegates.

The MLA's attorney members, most of whom are specialists in admiralty law, represent all maritime interests—ship-owners, charterers, cargo owners, shippers, forwarders, port authorities, seamen, longshoremen, stevedoring companies, passengers, marine insurance underwriters and brokers, and other maritime plaintiffs and defendants.

The objectives of the MLA, as stated in its Articles of Incorporation, are to advance reforms in the maritime law of the United States, to facilitate justice in its administration, to promote uniformity in its enactment and interpretation, to furnish a forum for the discussion and consideration of problems affecting maritime law and its administration, to participate as a constituent member of the Comité Maritime International and as an affiliated organization of the

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[1] Pursuant to this Court's Rule 37.6, no counsel for any party authored this brief in whole or in part, and no person or entity other than *amicus curiae* made a monetary contribution to the preparation or submission of this brief. Pursuant to Rule 37.2, counsel of record for all parties received timely notice of *amicus curiae's* intention to file this brief and have consented to this filing.

American Bar Association, and to act with other associations in efforts to bring about greater harmony in the shipping laws, regulations, and practices of different nations.

To further these objectives, the MLA has sponsored a wide range of legislation dealing with maritime matters and has cooperated with congressional committees in formulating maritime legislation.[2] Similarly, the MLA has assisted with international maritime projects undertaken by the United Nations, the International Maritime Organization, and the Comité Maritime International.

Consistent with its mission to promote uniformity in the interpretation of maritime law, the MLA has appeared as *amicus curiae* in cases that raise substantial questions affecting uniformity.[3] This case creates an irreconcilable split between two of the most active maritime circuit courts concerning the availability and extent of punitive damages under general maritime law.

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[2] *E.g.*, Carriage of Goods by Sea Act, 46 U.S.C. § 30701 *note*; Death on the High Seas Act, 46 U.S.C. §§ 30301-30308; Federal Arbitration Act, 9 U.S.C. §§ 1-16; Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1330, 1602-1611; Jones Act, 33 U.S.C. § 30104; Water Pollution Control Act Amendments of 1972, 33 U.S.C. §§ 1251-1367; Convention of the International Regulations to Prevent Collisions at Sea, 28 U.S.T. 3459, *as amended*, T.I.A.S. 10672; United States Inland Navigation Rules, 33 U.S.C. §§ 2001-2073.

[3] *E.g.*, *American Triumph LLC v. Tabingo*, 138 S. Ct. 648 (2018); *Sprietsma v. Mercury Marine*, 537 U.S. 51 (2002); *United States v. Locke*, 529 U.S. 89 (2000); *Am. Dredging Co. v. Miller*, 510 U.S. 443 (1994); *Sisson v. Ruby*, 497 U.S. 358 (1990); *Offshore Logistics, Inc. v. Tallentire*, 447 U.S. 207 (1986); *Ray v. Atl. Richfield Co.*, 435 U.S. 151 (1978).

The MLA urges the Court to grant certiorari to resolve this conflict and restore uniformity.

## II. SUMMARY OF ARGUMENT

The Ninth Circuit's ruling that a vessel owner may be subject to punitive damages in a personal injury suit alleging unseaworthiness directly conflicts with rulings of courts across the nation and, in particular, the Fifth Circuit. This conflict creates substantial uncertainty for maritime actors and those who advise them about the risks and potential exposure presented by litigation, and increases the risk of improper forum shopping. Both parties in such actions must be able to rely on the predictability and uniformity of federal maritime law and the boundaries of federal maritime legislation. The Court's intervention is necessary to mend the split and unify federal maritime law on this important issue.

## III. ARGUMENT

### A. Conflict Over the Availability of Punitive Damages Under General Maritime Law Destroys Uniformity.

More than a century ago, the Court explained that "[n]o [state] legislation is valid if it . . . works material prejudice to the characteristic features of the general maritime law or if it interferes with the proper harmony and uniformity of that law in its international and interstate relations." *Southern Pacific Co. v. Jensen*, 244 U.S. 205, 215 (1916). The foundation for

uniformity is derived from our Constitution, which by extending the judicial power of the United States to all cases of maritime jurisdiction, recognizes the danger that patchwork application of maritime law can have on peripatetic maritime commerce. Indeed, a uniform federal maritime law was one of the primary reasons for the exclusive grant of admiralty jurisdiction to the federal courts. *See* 3 Elliot's Debates 532 (Madison) ("If, in any case, uniformity be necessary . . . [the] establishment of one revisionary superintending power can alone secure such uniformity. . . . To the same principles may also be referred their cognizance in admiralty and maritime cases. As our intercourse with foreign nations will be affected by decisions of this kind, they ought to be uniform.").

To this day, the principle of uniformity is a central tenet of general maritime law, ensuring that maritime law is applied consistently throughout the country in whatever forum it may arise. *See Norfolk Southern Ry. v. Kirby*, 543 U.S. 14, 28 (2004) ("We have explained that Article III's grant of admiralty jurisdiction must have referred to a system of law coextensive with, and operating uniformly in, the whole country."); *Miles v. Apex Marine Corp.*, 498 U.S. 19, 26-27 (1990) (citing *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 402 (1970)).

The Ninth Circuit's decision in this case creates an irreconcilable split with the Fifth Circuit as to whether punitive damages are available in a general maritime law claim against a vessel owner for unseaworthiness. The conflict arises out of conflicting interpretations of

*Miles*, 498 U.S. at 19, and *Atlantic Sounding Co. v. Townsend*, 557 U.S. 404 (2009). The Ninth Circuit relied on *Townsend* and found that because punitive damages are available for general maritime law claims for maintenance and cure, punitive damages are also available for unseaworthiness. In *McBride v. Estis Well Serv., LLC*, 768 F.3d 382, 391 (5th Cir. 2014), on the other hand, the Fifth Circuit found that *Miles* controlled and reasoned that because punitive damages were not permitted for personal injury and death claims under the Jones Act, they were similarly not available on a companion unseaworthiness claim. The dispute boils down to whether an unseaworthiness claim is more like a general maritime law claim for maintenance and cure or more like a Jones Act claim for damages.

In addition to the Fifth Circuit, the Ninth Circuit's ruling conflicts with rulings out of the First, Second, and Sixth Circuits, as well as the Texas Supreme Court, all of which have relied on *Miles* and declared that, because the legislature limited damages for a seaman's personal injury claim under the Jones Act to pecuniary losses, punitive damages are similarly not available in an unseaworthiness claim. *Horsley v. Mobil Oil Corp.*, 15 F.3d 200, 203 (1st Cir. 1994) (holding that "*Miles* mandates the conclusion that punitive damages are not available in an unseaworthiness action under general maritime law"); *Wahlstrom v. Kawasaki Heavy Indus.*, 4 F.3d 1084, 1094 (2d Cir. 1993) (the "post-*Miles* authority lends additional support" to the Court's conclusion that punitive damages are not

allowed under the general maritime law); *Miller v. Am. President Lines, Ltd.*, 989 F.2d 1450, 1455, 1457-1459 (6th Cir. 1993) (relying on *Miles*, the court held that punitive damages are not available in a general maritime law unseaworthiness action for the wrongful death of a seaman); *Penrod Drilling Corp. v. Williams*, 868 S.W.2d 294, 296-297 (Tex. 1993) (holding that punitive damages are not available in an unseaworthiness claim involving nonfatal injuries).

The disparity in the availability of punitive damages from one coast to another results in shifting landscapes of liability for vessel owners, many of whom operate in multiple states. Without the Court's intervention, a vessel owner sued for unseaworthiness on the Pacific Coast may face a claim for punitive damages, whereas its exposure on the same claim when filed in Texas, Louisiana or Mississippi would be limited to pecuniary losses. This lack of uniformity directly impacts a vessel owner's business by complicating its ability to develop and implement consistent internal policies, thwarting its ability to obtain universal and consistent insurance, and rendering the ability of its counsel to assess, predict, and minimize risk infinitely more difficult.

The split among the circuit courts on the availability of punitive damages for unseaworthiness creates uncertainties for injured seamen as well. Two injured seamen pursuing damages based upon the same set of facts may be entitled to different categories of damages depending upon the state in which each suit is located.

In addition to making it difficult for both plaintiff and defendant to assess and resolve claims short of litigation, this legal disparity may have the unfortunate effect of encouraging forum shopping. *See* Patrick J. Borchers, *Punitive Damages, Forum Shopping, and the Conflict of Laws*, 530 LA. L. REV. 529 (2010); Thomas H. Koenig, *The Shadow Effect of Punitive Damages on Settlements*, 1998 WIS. L. REV. 169, 172. It is important for this Court to reestablish the predictability and uniformity of maritime law in this area for all those involved in the marine industry.

### B. The Court is Responsible for Prescribing Rules for the Assessment of Punitive Damages.

The Court has the authority and responsibility to develop and guide the general maritime law of the nation. It is tasked with prescribing rules for the assessment of punitive damages, including the development of constitutional and common-law guidelines for the review of punitive damages awards. *See, e.g.*, *Exxon Shipping Co. v. Baker*, 554 U.S. 471 (1998); *Cal. v. Deep Sea Research*, 523 U.S. 491, 501 (1998) ("The federal courts have had a unique role in the admiralty cases since the birth of this Nation, because maritime commerce was . . . the jugular vein of the Thirteen States.").

The Ninth Circuit has not yet reviewed a punitive damages award in this case—it was only asked whether such a remedy was available. Nevertheless, in

following the reasoning of *Townsend*, the Ninth Circuit has at least suggested that it would find appropriate the "willful and wanton" standard for punitive damages articulated by the *Townsend* Court—a *mens rea* that is analytically incompatible with the strict liability nature of an unseaworthiness claim. By granting certiorari, the Court will not only have the opportunity to unify the law, but also to outline guidelines, if necessary, for the lower courts to apply when addressing punitive damages claims in the unique context of an unseaworthiness claim.

## IV. CONCLUSION

The MLA respectfully submits that the petition for certiorari should be granted.

Respectfully submitted,

FRANCIS X. NOLAN, III
VEDDER PRICE P.C.
1633 Broadway
31st Floor
New York, NY 10019
212.407.7700
fnolan@vedderprice.com

*President*
MARITIME LAW ASSOCIATION
OF THE UNITED STATES

MOLLY J. HENRY
*Counsel of Record*
DAVID R. BOYAJIAN
SCHWABE, WILLIAMSON
& WYATT, P.C.
1420 5th Ave., Suite 3400
Seattle, WA 98101
206.622.1711
mhenry@schwabe.com
dboyajian@schwabe.com

*Counsel for Amicus Curiae*

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